



U.S. COMMODITY FUTURES TRADING COMMISSION

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**Division of
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August 16, 2019

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VIA ECF

The Honorable John G. Koeltl
United States District Judge
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Courtroom 14A
New York, New York 10007-1312

Re: *Commodity Futures Trading Commission v. Control-Finance Ltd., et al.*,
Civil Action No. 1:19-cv-05631-JGK

Dear Judge Koeltl:

Pursuant to Local Rules 5.2(b) and 7.1(d) and Rules 1.E and 1.F of the Court's Individual Practices, we write on behalf of Plaintiff Commodity Futures Trading Commission (the "Commission") to respectfully request an adjournment of the Initial Conference in the above-captioned action and the submission of a Rule 26(f) report.

The Initial Conference is currently scheduled for September 9, 2019, and, pursuant to Rule 2.A of the Court's Individual Practices, the parties are expected to confer and provide a Rule 26(f) report to the Court before that date. As detailed below, despite diligent efforts, the Commission has not yet served the defendants in this action and does not anticipate that it will be able to do so before September 9, 2019. In the interests of efficiency, the Commission asks that the Initial Conference be adjourned until it is able to serve both defendants.

The Commission filed its complaint against Defendants Control-Finance Limited ("Control-Finance") and Benjamin Reynolds ("Reynolds") on June 17, 2019, alleging fraud and other violations of the Commodity Exchange Act and its implementing Commission Regulations. *See* ECF No. 1. As set forth in the complaint, Reynolds is an individual and United Kingdom national who resides in Manchester, England. Control-Finance was organized by Reynolds and incorporated as a United Kingdom private limited company by the Registrar of Companies for England and Wales (the "U.K. Registrar"). At all times relevant to this action, Reynolds acted as Control-Finance's sole owner and director, and the company purported to maintain a Registered Office in Manchester, England.

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In accordance with Rules 4(f)(1) and 4(h)(2) of the Federal Rules of Civil Procedure, the Commission has endeavored to serve Reynolds and Control-Finance through means authorized by the Hague Convention on Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters. Specifically, the Commission has retained a solicitor in the United Kingdom, who in turn hired an agent to personally serve Reynolds at his last known residential address and to serve Control-Finance at its Registered Office address. To date, the agent's attempts to serve Reynolds have been unsuccessful. The agent recently discovered that Reynolds provided a fictitious address to the U.K. Registrar when he applied to incorporate Control-Finance, and the Commission has not yet identified an alternative address for him. While the agent was able to deliver a set of service papers to Control-Finance's Registered Office address, the Commission is still in the process of confirming that service on Control-Finance is complete under the Hague Convention.

The Commission is currently considering alternative options for serving Reynolds and anticipates that it may need to apply to the Court for leave to use a substitute means of service pursuant to Federal Rule of Civil Procedure 4(f)(3). As a result, the Commission will likely need additional time to complete service of process in this case. In addition, given Reynolds's attempts to conceal his whereabouts, the Commission does not anticipate that he or Control-Finance will appear to defend this action once served. In that event, the Commission will move for a default judgment, which will obviate the need for an Initial Conference and the preparation of a discovery schedule.

For the foregoing reasons, the Commission respectfully requests that the Court adjourn the Initial Conference and the submission of a Rule 26(f) report until the Commission completes service on the defendants. There have been no previous requests for extensions or adjournments in this case. Due to the Commission's inability to locate Reynolds for service, it has not been able to seek his consent to this request.

We thank the Court for its consideration of this matter.

Respectfully submitted,

**COMMODITY FUTURES
TRADING COMMISSION**

/s/ Luke B. Marsh

Luke B. Marsh (*pro hac vice application pending*)

Jonah E. McCarthy (Bar No. JM1977)

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